

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801)530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

JAMES MELVIN HARDMAN

Respondent.

ORDER TO SHOW CAUSE

Docket no. SD-05-0024

**TO: James Melvin Hardman
2062 Sycamore Lane
Salt Lake City, UT 84117**

It appears to the Director of the Utah Division of Securities (Director) that James Melvin Hardman (Hardman or Respondent) has engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (the Act). Those acts are more fully described herein. Having reviewed the relevant facts discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF JURISDICTION

1. Jurisdiction is appropriate in this matter because Respondent allegedly violated § 61-1-1 (Securities Fraud) and § 61-1-3 (Sale by Unlicensed Agent) of the Act, while engaged in the offer and sale of securities in Utah.

STATEMENT OF FACTS

2. James Melvin Hardman (Hardman) is a Utah resident whose last known address is 2062 Sycamore Lane, in Salt Lake City, Utah.
3. From December 1998 through March 2004, Hardman frequented a Salt Lake City retail store owned and operated by Utah resident, Melanie Kay Bailey (Bailey). Hardman befriended Bailey and came in to the store to tell her how much money he was making trading in the futures market.
4. Hardman told Bailey he wanted to get several investors and pool their money to invest in the futures market, and that he would act as the financial adviser over the investment and make all of the investment decisions on the investors' behalf. Such an investment opportunity falls within the definition of a security under § 61-1-13 of the Act.
5. Hardman told Bailey he was trained on the S&P 500 E-Mini trading market and that he wrote a handbook for trading E-Minis. E-minis are futures contracts that can be traded electronically on the Chicago Mercantile Exchange and are based on the S&P 500 index. Hardman told Bailey that all of her money would be invested in E-Minis.

6. In connection with the offer and sale of the investment to Bailey, Hardman made the following representations:
 - a. That profits would yield 10-25% each day;
 - b. That the investment was low-risk;
 - c. That if Bailey invested \$10,000 he could increase her money by 10-25% per day;
 - d. That he would guarantee her initial investment back by December 2003;
 - e. That once Bailey's trading account was established, Bailey would have access to all account activities and statements; and
 - f. That Bailey's money would be used to purchase E-Minis.
7. In connection with the offer and sale of the investment to Bailey, Hardman failed to provide Bailey with certain material information which would have allowed her to make an informed investment decision. Hardman failed to provide Bailey with the following material information:
 - a. That Hardman has several civil judgments against him totaling \$1,197,103.94;
 - b. A description of operational costs involved in trading E-Mini's;
 - c. Whether commissions or compensation would be paid relating to the investment;
 - d. A description of how the investment makes money;
 - e. The degree of risk involved for the investor;

- f. Whether the investment is a registered security or exempt from registration;
 - g. Whether Hardman was licensed to sell the investment;
 - h. Whether there were any lawsuits, judgments, tax liens, bankruptcies, or actions taken by regulatory agencies against any individual involved with the investment.
8. On March 26, 2003, at Bailey's home in Sandy, Utah, Bailey gave Hardman her first investment of \$10,000 by personal check made out to Hardman.
9. At the March 26, 2003 meeting, Hardman told Bailey he wanted to set up a limited liability company to safeguard Bailey from being held liable should Hardman be sued for tax reasons. Hardman told Bailey he would be the general partner and make all of the investment decisions on Bailey's behalf, and that Bailey would be the limited partner whose only role was supplying capital.
10. On April 25, 2003, Hardman registered TwoMells, LLC (TwoMells) as a Utah limited liability company. TwoMells' registration expired on August 19, 2004 for failure to file a renewal. Hardman was listed as a member and the registered agent of TwoMells, and Bailey was listed as a member.
11. Hardman told Bailey that her trading account would be set up under the name TwoMells, LC, and once the account was established, she would have access to all account activities and statements.

12. On September 29, 2003, Hardman told Bailey if he had more money he could double Bailey's profits and return her initial investment before December.
13. On October 6, 2003, at Hardman's home in Salt Lake City, Utah, Bailey gave Hardman her second and final investment of \$10,000 by personal check made out to Hardman.
14. Despite Bailey's numerous requests, Hardman never supplied Bailey with statements or transaction reports from her account.
15. Bailey received nothing from her investment with Hardman.¹

CAUSES OF ACTION

COUNT I

Securities Fraud under § 61-1-1 of the Act

16. The Division incorporates and re-alleges paragraphs 1 through 15.
17. The investment offered and sold by Hardman falls within the definition of a security under § 61-1-13(24)(a) of the Act and under Rule 164-13-1 of the Utah Administrative Code because Bailey expected a return on her investment based on the efforts of Hardman.
18. Section 61-1-1 of the Act states:

¹ On March 30, 2005, after Bailey sought the advice of an attorney, and filed a complaint with the Division, Hardman paid Bailey \$20,000, representing her principal investment.

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to . . . make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

19. The representations Hardman made to Bailey (listed above in paragraph 6) prior to receiving her investment were false. The investment produced no profits, Hardman failed to pay Bailey her initial investment by December 2003, she was never given access to account activities and statements, the investment was apparently very risky, and Hardman used Bailey's money for personal expenses instead of investing in E-Minis.
20. Hardman made untrue statements of material fact to Bailey, and failed to state several material facts necessary in order to make the untrue statements not misleading.
21. Hardman's misrepresentations and omissions of material fact, listed above in paragraphs 6 and 8, made in connection to the offer and sale of securities to Bailey, violate § 61-1-1 of the Act.

COUNT II

Sale by Unlicensed Agent under § 61-1-3 of the Act

22. The Division incorporates and re-alleges paragraphs 1 through 21.
23. Section 61-1-3 of the Act states:

It is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.

24. Section 61-1-13(2) of the Act defines an “Agent” as:

[A]ny individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

25. Despite being unlicensed, Hardman transacted business in this state as an agent of TwoMells in violation of § 61-1-3.


ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondent to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63-46b-4 and 63-46b-6 through -10, and held before the Utah Division of Securities. The hearing will occur at a date, time and place agreed upon by the parties after an answer has been filed. If Respondent fails to file an answer and appear at the hearing, an order to cease and desist may be issued and a fine imposed by default against Respondent, as provided by Utah Code Ann. § 63-46b-11. At the hearing, Respondent may show cause, if any they have:

- a. Why Respondent should not be found to have engaged in the violations alleged by the Division;
- b. Why Respondent should not be barred from obtaining a securities license in the future under the provisions of Utah Code Ann. § 61-1-6;


- c. Why Respondent should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. §§ 61-1-3(1) and (2), 61-1-7, or any other section of the Act; and
- d. Why Respondent should not be ordered to pay a fine to the Division in an amount to be determined at the hearing.

DATED this 20 day of May, 2005.



DAVID PREECE
Director, Utah Division of Securities

Approved:


JEFFREY BUCKNER
Assistant Attorney General

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

JAMES MELVIN HARDMAN

Respondent.

NOTICE OF AGENCY ACTION

Docket no. SD-05-0024

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of the mailing of the Order to Show Cause. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§63-46b-3 and 63-46b-6 through 11. The facts on which this action is based are set forth in the foregoing Order to Show Cause.

Within thirty (30) days of the date of this notice, you are required to file a written response with the Division. The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Order to Show Cause. After your response is filed, a hearing will be set and a date and time agreed upon by the parties.

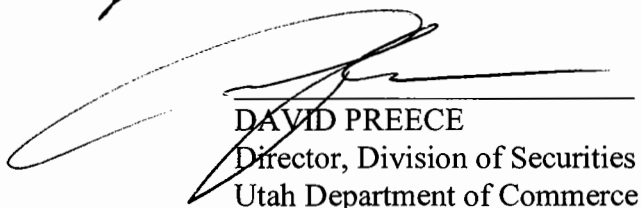
If you fail to file a written response, as set forth herein, or fail to appear at the hearing, the Division of Securities will hold you in default, and a fine will be imposed against you in accordance with Utah Code Ann. §64-46b-11, without the necessity of providing you with any further notice.

The presiding officer in this case is David Preece, Director, Division of Securities, 160 East 300 South, P.O. Box 146760, Salt Lake City, UT 84114-6760, telephone (801) 530-6600. The Administrative Law Judge will be J. Steven Eklund, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6648. At such hearing, the Division will be represented by the Utah Attorney General's Office, 160

East 300 South, P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310.
At the hearing, you may appear and be heard and present evidence on your behalf.

You may attempt to negotiate a settlement of the matter without filing an answer or proceeding to a hearing. Should you so desire, please contact the Utah Attorney General's Office. Questions regarding the Order to Show Cause and Notice of Agency Action should be directed to Jeff Buckner, Assistant Attorney General, 160 E. 300 South, P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310.

DATED this 20 day of May, 2005.



DAVID PREECE
Director, Division of Securities
Utah Department of Commerce

Certificate of Mailing

I certify that on the 24th day of May, 2005, I mailed, by certified mail, a true and correct copy of the Order to Show Cause and Notice of Agency Action to:

James Melvin Hardman
2062 Sycamore Lane
Salt Lake City, UT 84117

Certified Mail # 7004 1160 0004 1730 6873

Pam Radzinski
Executive Secretary